

***United States Court of Appeals
for the Second Circuit***



APPENDIX

77-6117

United States Court of Appeals

FOR THE SECOND CIRCUIT

MEDITERRANEAN REFINING COMPANY,

Plaintiff-Appellant,

—against—

THE UNITED STATES OF AMERICA,

Defendant-Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

JOINT APPENDIX

ANDREW J. AZZARA

Attorney for Plaintiff-Appellant

380 Madison Avenue

New York, New York 10017

ROBERT B. FISKE, JR.

United States Attorney for the
Southern District of New York

Attorney for Defendant-Appellee

United States Courthouse Annex

One St. Andrew's Plaza

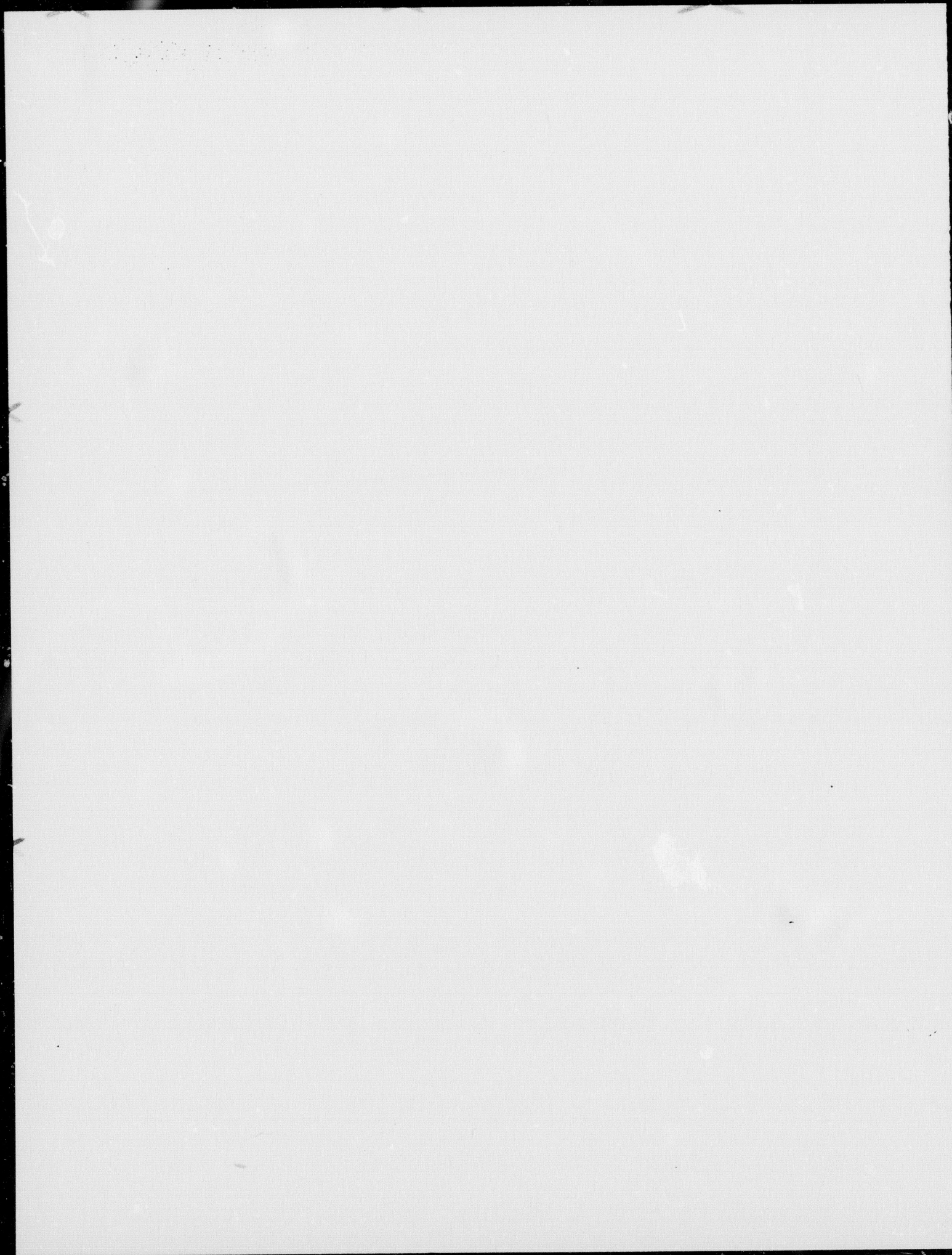
New York, New York 10007

OCT 11 1977

PAGINATION AS IN ORIGINAL COPY

I N D E X

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Docket Entries

75-5361 Judge Tenney Mediterranean Refining Co. -vs- United States of America

DATE	NR.	PROCEEDINGS
10-29-75	(1)	Filed complaint and issued summons.
11-12-75	2	Filed Summons with Marshal's Return. Served USA by Ralph Lee, Clerk for US Attys Office, 11/6/75. Atty Gen. Wash. D.C. on 11/6/75.
01-17-76	3	Filed Stip & Order of extension of time for deft to answer complaint from 1/6/76 to 3/6/76. Tenney, J.
03-16-76	4	Filed Stip & Order extending time for deft to answer complaint from 3/6/76 to 4/16/76. Tenney, J.
05-18-76	5	Filed Stip & Order extending time of deft to answer from 4/16/76 to 6/16/76. Tenney, J.
05-17-76		PRE-TRIAL CONFERENCE HELD BY <i>Mary Kelly</i>
08-25-76	6	Filed 60 Day Order that parties complete all pretrial proceedings & plttf file note of issue. Tenney, J. (mn)
11-24-76	7	Filed Deft's interrons.
11-24-76	8	Filed ANSWER of Deft. US Atty
01-11-77	9	PRE-TRIAL CONFERENCE HELD BY <i>John P. ...</i>
01-11-77	9	Filed plttfs Answer to defts interrogatories dated 11/30/76
02/9/77	10	Filed Notice of Motion by plttf re: an order pursuant to Rule 7 FRCP to place this action on the suspense ret 3/14/77
03-15-77	11	Filed Stip & order the action to be transferred to the suspense calendar is adjd to 3/23/77 TENNEY J
03-24-77	12	Filed Notice of Motion by deft re: an order pursuant to FRCP 56 g granting summary judgment dismissing the complaint. ret 4/8/77
03-24-77	13	Filed deft's memo re: opposition to plttfs motion to place the action in suspense etc.
04-15-77	14	Filed plttf's notice in opposition to motion for summary judgment and in support of plttf's motion to place on suspense calendar.
5-27-77	15	Filed Memorandum Opinion #45958 the deft's motion for summary judgment is granted, the action is dismissed with prejudice on the ground that the plttf has failed to state a claim for a tax refund, and the plttf's motion to transfer this action to the Court's suspense docket is denied, so ordered, Tenney, J. m/n
6-3-77	16	Filed Judgment that deft USA have judgment against plttf Mediterranean Refining Co. dismissing the action, with prejudice on the ground that plttf has failed to state a claim for a tax refund, Clerk,
7-25-77	17	Filed Plttf's Notice of Appeal from Order granting deft's motion for Summary Judgment (Opinion No. 45958) entered on 5/27/77. (Mailed copy to Robert B. Fiske, Jr. - Attn Attn Stuart I. Parker, AUSA on 7/25/77)

BEST COPY AVAILABLE

B
 SEARCHED
 SERIALIZED
 INDEXED
 FILED
 J. Tenney
 Deputy Clerk

Complaint

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x
MEDITERRANEAN REFINING COMPANY, :
Plaintiff, : Civil Action No.
-against- : 25 Civ 5801
: COMPLAINT
THE UNITED STATES OF AMERICA, : CHT
Defendant :
----- x

1. This is an action for recovery of Internal Revenue taxes, and this Court has jurisdiction by reason of section 1346(a) of Title 28 of the United States Code.

2. Plaintiff is a corporation organized under the laws of the State of Delaware with its principal agency located at 380 Madison Avenue, New York City.

3. Plaintiff duly and timely filed its Federal income tax return for the calendar year 1962 with the Manhattan District Director of Internal Revenue and duly and timely paid the Federal income tax shown thereon in the amount of \$407,311.54.

4. Plaintiff keeps its books and records and files its Federal income tax returns, including its return for the calendar year 1962, under the accrual method of accounting.

5. Plaintiff's taxable income shown on its Federal income tax return for the calendar year 1962 was derived entirely from the operation of a petroleum refinery in Lebanon and the sale in Lebanon of the products thereof.

3a
Complaint

6. After the filing of plaintiff's Federal income tax return for the calendar year 1962, the Ministry of Finance of the Lebanese Republic, on or about February 1, 1966, made an assessment of Lebanese income tax on plaintiff's income for the calendar year 1962 in the amount of 947,172 Lebanese Pounds, equivalent to \$US 347,586. Said assessment was made under the provisions of Law Decree 144 of 1959 of the Lebanese Republic as in effect with respect to income of the calendar year 1962 which imposed a tax on total taxable profits realized in Lebanon after deduction of all expenses and charges entailed by the exercise of the trade, industry or occupation. Said assessment is still outstanding and enforceable under the laws of the Lebanese Republic.

7. On March 13, 1973, plaintiff duly and timely filed with the Internal Revenue Service Center, Holtsville, New York, a claim for refund of Federal income tax for the calendar year 1962, in the amount of \$347,586 plus interest thereon as provided by law, based on the allowability under the Internal Revenue Code sections 31, 901, and 905 of credit for the Lebanese income tax accrued for the calendar year 1962 as set forth in paragraph 6. A true and correct copy of said claim for refund is attached hereto and marked "Exhibit A" and made a part hereof.

8. On November 7, 1973, plaintiff received by certified mail a notice of disallowance, dated October 30, 1973, of the claim for refund referred to in paragraph 7.

4a
Complaint

9. By the rejection of the claim for refund referred to in paragraph 8, defendant erroneously and improperly failed to allow against plaintiff's Federal income tax for the calendar year 1962 credit for the Lebanese income tax accrued for in that year, and as a consequence there has been erroneously and excessively collected from plaintiff Federal income tax for the calendar year 1962 in the amount of \$347,586.

10. By virtue of the foregoing, defendant became and is indebted to plaintiff for wrongfully assessed and collected Federal income taxes in the amount of \$347,586, which amount has not been heretofore credited or refunded.

WHEREFORE, plaintiff demands judgment against defendant in the amount of Dollars (\$347,586), interest thereon as provided by law and the costs of this action.

DATED: New York, New York
October 29, 1975


Andrew J. Azgara
Attorney for Plaintiff

380 Madison Avenue
New York, N.Y. 10017

5a

Form **843**(Rev. Dec. 1970)
Department of the Treasury
Internal Revenue Service**EXHIBIT A—CLAIM FOR REFUND
Claim**Director's Stamp
(Date received)**EXHIBIT "A"**

The Internal Revenue Service will indicate in the block below the kind of claim filed, and fill in, where required.

- ☐ Refund of Taxes Illegally, Erroneously, or Excessively Collected.
- ☐ Refund of Amount Paid for Stamps Unused, or Used In Error or Excess.
- ☐ Abatement of Tax Assessed (not applicable to income, estate or gift taxes).

Please Type or Print Plainly

Name of taxpayer or purchaser of stamps

MEDITERRANEAN REFINING COMPANY, c/o Caltex Petroleum Corporation

Number and street

380 Madison Avenue

City or town, State, and ZIP code

New York, New York 10017

Fill in applicable items—Use attachments if necessary

a. Your social security number

Wife's number, if joint return

b. Employer identification number (if any)

13-6065400

c. Internal Revenue Service office where return (if any) was filed

Manhattan

d. Name and address shown on return, if different from above

**Mediterranean Refining Company
c/o California Texas Oil Corporation
380 Madison Ave., New York, N.Y. 10017**e. Period—If for tax reported on annual basis, prepare separate form for each taxable year
From **January 1**, 19**62**, to **December 31**, 19**62**f. Kind of tax
U.S. Corporation Income Tax

g. Amount of assessment

\$ 407,312

Dates of payment

**September 11, 1962; December 6, 1962;
March 14, 1963; June 14, 1963**

h. Date stamps were purchased from Government

i. Amount to be refunded (if income tax, complete computation below)

\$ 347,586*

j. Amount to be abated (not applicable to income, estate, or gift taxes)

\$

k. The claimant believes that this claim should be allowed for the following reasons:

The basis of this claim is the accrual of Lebanese income tax for the calendar year 1962. Taxpayer contends that the income tax assessed against it by the Lebanese Government in the amount of Lebanese Pounds 947,172 (\$347,586) is a proper accrual for the year 1962. Therefore, taxpayer claims such accrual under Sec. 901, IRC, as a foreign tax credit against taxpayer's Federal income tax liability for the year 1962.

*or such greater amount as is legally refundable

Computation of Income Tax Refund		Income Tax
1 Tax withheld		407,312
2 Estimated tax paid		
3 Tax paid with original return		
4 Any additional income tax paid		407,312
5 Total tax paid (add lines 1-4)		59,726
6 Less: Your computation of correct tax		347,586
7 Amount of overpayment		
8 Amount previously refunded		347,586
9 Net overpayment (enter in item i above)		

Under penalties of perjury, I declare that I have examined this claim, including accompanying schedules and statements, and to the best of my knowledge and belief it is true, correct, and complete.

Signed

W J Carroll

Dated

March 13, 1973**Treasurer**

Answer

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
MEDITERRANEAN REFINING COMPANY, :

Plaintiff, :

-against- :

THE UNITED STATES OF AMERICA, :

Defendant. :
-----X

ANSWER

75 Civ. 5361 (CHT)

The defendant, United States of America, by its attorney Robert B. Fiske, Jr., United States Attorney for the Southern District of New York, for its answer to the complaint:

1. Denies the allegations in paragraph 1, except admits that this is an action for a refund of federal income taxes.

2. Admits the allegations in paragraphs 2 and 3.

3. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraphs 4, 5 and 6.

4. Denies the allegations in paragraph 7, except admits that on March 13, 1973 plaintiff filed a claim for refund of federal income tax for the calendar year 1962 and that a true and correct copy of said claim is Exhibit "A" to plaintiff's complaint.

5. Admits the allegations in paragraph 8.

6. Denies the allegations in paragraphs 9 and 10.

FIRST DEFENSE

7. The Court lacks subject matter jurisdiction over the complaint.

SECOND DEFENSE

8. The complaint fails to state a claim upon which relief can be granted.

WHEREFORE, defendant demands judgment dismissing the complaint, together with costs and disbursements of this action and such other and further relief as is just and proper.

Dated: New York, New York

November 23, 1976

ROBERT B. FISKE, JR.
United States Attorney for the
Southern District of New York
Attorney for Defendant-

By: Stuart I. Parker
STUART I. PARKER
Assistant United States Attorney
Office & P.O. Address:
United States Courthouse Annex
One St. Andrew's Plaza
New York, New York 10007
Tel: (212) 791-1924

TO:

ANDREW J. AZZARA
380 Madison Avenue
New York, NEW YORK

Interrogatories

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
MEDITERRANEAN REFINING COMPANY, :

Plaintiff, :

-against- :

THE UNITED STATES OF AMERICA, :

Defendant. :

INTERROGATORIES

75 Civ. 5361

at

-----x
PLEASE TAKE NOTICE that defendant by its attorney, Robert B. Fiske, Jr., United States Attorney for the Southern District of New York, pursuant to Rule 33 of the Federal Rules of Civil Procedure, hereby requests plaintiff herein to answer under oath the following written interrogatory in writing within 30 days after the date of service of this notice. The answer hereto should include all information known up to the date of the verification thereof.

1.(a) In regard to the assessment of Lebanese income tax for the calendar year 1962 referred to in paragraph 6 of the complaint, state how much, if any, of said assessment has been paid by plaintiff.

(b) State whether plaintiff is contesting in litigation or otherwise the amount of its tax liability to the Lebanese Government for 1962.

(c) If the answer to (b) is an affirmative, describe the nature of the tax contest and its present status, including whether the contested liability has been finally determined and, if so, when and in what forum it was determined.

Dated: New York, New York
November 23, 1976

ROBERT B. FISKE, JR.
United States Attorney for the
Southern District of New York

By:

261
STUART I. PARKER
Assistant United States Attorney

SIP:enw
75-5361

9a

Interrogatories

Office & P. O. Address:
United States Courthouse Annex
One St. Andrew's Plaza
New York, New York 10007
Tel.: (212) 791-1924

Answer to Interrogatories

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
MEDITERRANEAN REFINING COMPANY, :

Plaintiff. : 75 Civ. 5361

CHT

-against- : Answer to Interrogatories

THE UNITED STATES OF AMERICA, :

Defendant. :
-----x

Answer of plaintiff Mediterranean Refining Company,
to interrogatories dated November 23, 1976 served by defendant
on plaintiff November 30, 1976.

Interrogatory No. 1(a). As of this date, no part of
said assessment has been paid by plaintiff company.

Interrogatory No. 1(b). Plaintiff company has
contested by written protest and by oral presentations during
a series of negotiations with representatives of the Lebanese
Government, which discussions extended over several years.

Interrogatory No. 1(c). To date, the contested
liability has not been finally determined. The above-mentioned
discussions with the Lebanese Government regarding the assessment
for 1962 and other years were interrupted due to the political
situation and civil strife prevalent in Lebanon. The last series
of negotiations on this point ended in September 1973.

The nature of the tax contest is as follows:

1. A Convention was entered into between the Lebanese
Government and Mediterranean Refining Company on September 24,
1945, was ratified by the Lebanese Parliament on November 26, 1945,
and was promulgated by the Law of December 18, 1945.

The Convention contains provisions covering
immunity from taxation. Article XX is the basic provision of the
Convention concerning this immunity:

Answer to Interrogatories

No property tax, income tax or any dues or fiscal charge of any kind shall be imposed on the Company in the operations of the undertaking, whether those charges are in respect of its properties, operations, income, turnover ...

2. The Lebanese Parliament on June 29, 1956 enacted the following law.

As from the 1st of January 1952 and on [all companies which were enjoying exemption from these taxes and charges by virtue of agreements ratified by special laws] will be subject to income tax and all other levies and fiscal and municipal charges. The government has the right to conclude with the tax payers subject to the present law special agreements, with retroactive effect, by virtue of which it will receive a share of the profits of these tax payers in lieu and place of the taxes and charges due, provided that such agreements obtain the ratification of the legislative power".

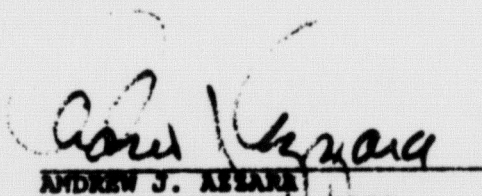
3. Pursuant to such law, assessments on income of Mediterranean Refining Company were made by the proper Lebanese tax authorities including the 1962 assessment under review.

4. As above-mentioned, such assessments have been contested by plaintiff company under the circumstances aforesaid.

I certify that the above written answers are true, to the best of my knowledge and belief.

Dated: New York, New York

January 21, 1977


ANDREW J. AZZAM
Attorney for Plaintiff
380 Madison Avenue
New York, New York 10017
Telephone: (212) 697-2000

TO: STUART I. PARKER
One St. Andrew's Plaza
New York, New York 10007

Notice of Motion to Transfer to Suspense Calendar

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x	
MEDITERRANEAN REFINING COMPANY,	:
Plaintiff.	: 75 Civ. 5361
- against -	: NOTICE OF MOTION
THE UNITED STATES OF AMERICA,	: TO TRANSFER TO
Defendant	: SUSPENSE CALENDAR
----- x	: (See Attached)

To: ROBERT B. FISKE, JR.
(Stuart I. Parker)
Attorney for Defendant

Please take notice, that the undersigned will bring the above motion on for hearing before this Court at Room 1904, United States Court House, Foley Square, City of New York on the 14th day of March 1977, at 10 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard.

ANDREW J. AZZARA
Attorney for Plaintiff
380 Madison Avenue
New York, N.Y. 10017

SIP:ow
3-1940

Notice of Motion for Summary Judgment

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- -x

MEDITERRANEAN REFINING COMPANY,	:	
	:	
Plaintiff,	:	NOTICE OF MOTION FOR
	:	<u>SUMMARY JUDGMENT</u>
- against -	:	
	:	75 Civ. 5631 (CHT)
THE UNITED STATES OF AMERICA,	:	
	:	
Defendant.	:	

----- -x

PLEASE TAKE NOTICE, that upon the plaintiff's answers to interrogatories, copies of which are submitted herewith, the plaintiff's papers in support of its motion to place the above-captioned action on the Court's Suspense Docket, and upon all the pleadings and proceedings heretofore had herein, the undersigned will move this Court on the 8th day of April 1977, or as soon thereafter as counsel can be heard, at the United States Courthouse, Foley Square, New York, New York, before the Honorable Charles H. Tenney, for an order, pursuant to Rule 56 of the Federal Rules of Civil Procedure, granting summary judgment dismissing the above-captioned action on the grounds that plaintiff has failed to state a claim upon which relief can be granted and the Court lacks jurisdiction over the subject matter of plaintiff's claim.

Dated: New York, New York
March 23, 1977

Yours, etc.

ROBERT B. FISKE, JR.
United States Attorney for the
Southern District of New York
Attorney for Defendant

By: Stuart I. Parker
STUART I. PARKER
Assistant United States Attorney

TO: ANDREW J. AZZARA
Attorney for Plaintiff
380 Madison Avenue
New York, New York 10017

SIP:ow
3-1940

Defendant's Rule 9(g) Statement

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - -x

MEDITERRANEAN REFINING COMPANY, :

Plaintiff, :

- against - :

THE UNITED STATES OF AMERICA, :

Defendant. :

DEFENDANT'S RULE
9(g) STATEMENT

75 Civ. 5631 (CHT)

- - - - -x

Pursuant to Rule 9(g) of the General Rules of the United States District Court for the Southern District of New York, defendant contends there is no genuine issue to be tried with respect to the following material facts:

1. In regard to the income tax assessment plaintiff alleges the Lebanese Government made in 1966 on its income for the calendar year 1962:

a. No part of said assessment has been paid by plaintiff. (Answer to Interrogatory 1(a)*).

b. Plaintiff has contested the said income tax assessment. (Answer to Interrogatory 1(b)).

c. The contest with the Lebanese Government over the said income tax assessment has not been finally determined. (Answer to Interrogatory 1(c)).

2. More than 10 years have passed since March 15, 1963, the date on which plaintiff's income tax returns for the calendar year 1962 were required to be filed under 26 U.S.C. §6072(b).

Dated: New York, New York

March 23, 1977

ROBERT B. FISKE, JR.
United States Attorney for the
Southern District of New York
Attorney for Defendant

By: Stuart I. Parker
STUART I. PARKER
Assistant United States Attorney

* Both copies of the interrogatories and plaintiff's answers to them are annexed hereto.

15a

INTERROGATORIES AND PLAINTIFF'S ANSWER
TO INTERROGATORIES

Interrogatories and Plaintiff's Answer to Interrogatories

Annexed to Defendant's Rule 9(g) Statement

(Contained hereinbefore at pages 8a to 11a inclusive)

16a

Decision of Charles H. Tenney, U.S.D.J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
MEDITERRANEAN REFINING COMPANY, :

Plaintiff, : 75 Civ. 5631 (CHT)

-against- :

THE UNITED STATES OF AMERICA, :

Defendant. :
-----X

MEMORANDUM

APPEARANCES

For the Plaintiff: ANDREW J. AZZARA, ESQ.
380 Madison Avenue
New York, N.Y. 10017

For the Defendant: ROBERT B. FISKE, JR.
United States Attorney for the
Southern District of New York
One St. Andrew's Plaza
New York, N.Y. 10007

Of Counsel: STUART I. PARKER
Assistant United States Attorney

TENNEY, J.

This is a motion for summary judgment made by the defendant, United States of America, in an action brought by the plaintiff corporation under 26 U.S.C. § 7422 for a refund of federal income taxes paid for the calendar year 1962. The plaintiff claims that it was wrongfully denied a foreign tax credit pursuant to 26 U.S.C. §§ 901 et seq. The plaintiff moved to

Decision of Charles H. Tenney, U.S.D.J.

place this case on the Court's suspense docket pending the outcome of its tax dispute with the Lebanese Government which has also assessed taxes against the plaintiff for the year 1962. The defendant moved for summary judgment, contending that the facts admitted by the plaintiff in its Answers to Interrogatories fail as a matter of law to establish entitlement to a foreign tax credit.

In 1962, the tax year at issue, the plaintiff, an American corporation, derived its income entirely from the operation of a petroleum refinery in Lebanon and the sale of petroleum products in that country. It paid United States income taxes for the calendar year 1962 in the amount of \$407,311.54. (Complaint ¶ 3). The plaintiff alleges that in February 1966 the Government of Lebanon made an assessment of Lebanese income tax on its income for the calendar year 1962 in an amount equal to \$347,586. (*Id.* ¶ 6). This income tax assessment was contested by the plaintiff who pursued negotiations with the Lebanese Government until September 1973 when the talks "were interrupted due to the political situation and civil strife prevalent in Lebanon." (Answer to Interrogatory 1(c)). At this time, the plaintiff has not acquiesced to or paid any part of the assessment to the Lebanese Government and maintains that the tax dispute is still unresolved. (*Id.* 1(a), (b) and (c)).

On March 13, 1973 the plaintiff filed with the United States Internal Revenue Service a claim for an income tax refund

Decision of Charles H. Tenney, U.S.D.J.

in the amount of \$347,586 for the calendar year 1962, alleging that it was entitled to a foreign tax credit to offset Lebanese income tax accrued in that amount for 1962. (Complaint ¶ 7). The claim was rejected by the service on November 7, 1973 (id. ¶ 8), and on November 29, 1975 this lawsuit was commenced.

Under 26 U.S.C. § 901(b)(1) a domestic corporation is allowed a credit against its federal income tax in "the amount of any income, war profits, and excess profits taxes paid or accrued during the taxable year to any foreign country."

(Emphasis added). The credit has been characterized as "an act of grace on the part of Congress," Irving Air Chute Co. v. Commissioner of Internal Revenue, 143 F.2d 256, 259 (2d Cir. 1944), and is available to a taxpayer who meets the conditions of this strictly statutory provision. Rev. Rul. 58-55, 1958-1 Cum. Bul. 266. The taxpayer must show that earnings for the year in dispute have been levied upon by a foreign government and that taxes have been paid to the foreign government or, having been finally adjudicated, are to be paid. See Dixie Pine Products Company v. Commissioner of Internal Revenue, 320 U.S. 516, 519 (1944).

The purpose of the foreign tax credit provision is to prevent double taxation of income which is earned and taxed abroad. United States v. Campbell, 351 F.2d 336 (2d Cir. 1965), cert. denied, 383 U.S. 907 (1966). The court in that case further explained the statutory scheme:

Decision of Charles H. Tenney, U.S.D.J.

"Section 905(a) of the Code determines when the credit may be taken and allows the taxpayer an election between the cash or accrual method of reporting. The United States credit for an uncontested foreign tax of course applies to the year in which the foreign tax was levied. In the event the foreign tax is contested by the taxpayer, the Internal Revenue Service has followed *Cuba R.R. v. United States* 124 F. Supp. 182 (S.D.N.Y. 1954), which requires a taxpayer on an accrual basis to accrue a foreign tax liability as a credit against United States tax in the year in which this liability has been finally determined." (Emphasis added). Id. at 339.

This Court must determine, then, whether the Lebanese tax assessment has been finally adjudicated or determined, thereby qualifying as "taxes paid or accrued" under section 901(b)(1), and able to sustain a tax credit. The plaintiff has admitted that although taxes were initially assessed against it by the Lebanese Government, it has not in fact paid the tax and, after four years without any formal action on the disputed assessment by that government, the taxes remain unpaid and the matter unresolved.

Since it appears that the plaintiff is not certain to pay taxes to the foreign government, this Court cannot conclude that the taxes have "accrued" within the intendment of the statutory allowance of a tax credit, and therefore the request for a refund is denied. This result accords with the purposes and policies of the United States tax laws which seek to tax earned income yet spare the taxpayer the burden of double taxation, while simultaneously encouraging the prompt resolution of dis-

Decision of Charles H. Tenney, U.S.D.J.

puted foreign tax claims. Finally, these goals would hardly be served by permitting a taxpayer to take advantage of this privilege under American tax law and at the same time violate a determination of liability under foreign law.

Accordingly, the defendant's motion for summary judgment is granted, the action is dismissed with prejudice on the ground that the plaintiff has failed to state a claim for a tax refund, and the plaintiff's motion to transfer this action to the Court's suspense docket is denied.

So ordered.

Dated: New York, New York

May 26, 1977

CHARLES H. TENNEY

U.S.D.J.

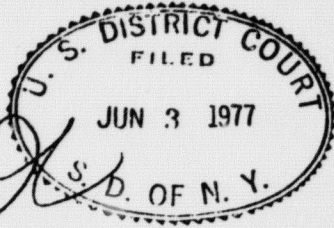
MICROFILM

JUN 5 1977

21a

Judgment Appealed From

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



----- X
MEDITERRANEAN REFINING COMPANY

Plaintiff

: 75 Civil 5361 (CHT)

-against-

THE UNITED STATES OF AMERICA

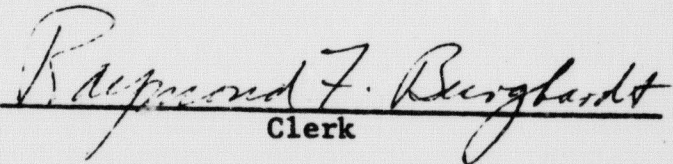
: JUDGMENT

Defendant
----- X

Defendant having moved the Court for summary judgment, pursuant to Rule 56, of the Federal Rules of Civil Procedure, and plaintiff having moved the Court to place the action on the Court's suspense docket, and the said motions having come on to be heard before the Honorable Charles H. Tenney, United States District Judge, and the Court thereafter on May 27, 1977, having handed down its memorandum opinion denying plaintiff's motion, and granting defendant's summary judgment motion, it is,

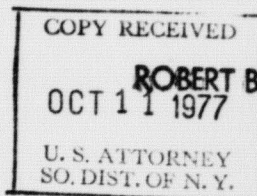
ORDERED, ADJUDGED and DECREED: That defendant UNITED STATES OF AMERICA have judgment against plaintiff MEDITERRANEAN REFINING COMPANY dismissing the action, with prejudice on the ground that plaintiff has failed to state a claim for a tax refund.

Dated: New York, N.Y.
June 3, 1977


Clerk

(12)

Two (2) ~~Service of three~~ (3) copies of the within *JOINT APPENDIX*
be admitted this *11th* day of *Oct.* 1977



ROBERT B. FISKE JR.

DEPENDANT - APPENDIX

